



National Association of Boards of Pharmacy

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nabp

MEMORANDUM OF UNDERSTANDING Between the National Association of Boards of Pharmacy and the

Commonwealth of Pennsylvania Relating to Its Prescription Drug Monitoring Program

Purpose

The purpose of this memorandum of understanding (MOU) is to describe the terms under which the National Association of Boards of Pharmacy® (NABP®), located at 1600 Feehanville Drive, Mount Prospect, IL 60056, will provide the NABP PMP InterConnect System® (System) services to the Commonwealth of Pennsylvania (State).

Recitals

The Pennsylvania prescription monitoring program (PMP) collects prescription drug dispensing or prescribing information and permits authorized users to access prescription drug information for controlled substance prescriptions that are dispensed to patients. The purpose of this program is to increase the quality of patient care by giving prescribers and dispensers access to a patient's prescription medication history through an electronic system that will alert medical professionals to potential dangers for purposes of making treatment determinations and to aid regulatory and law enforcement agencies in the detection and prevention of fraud, drug abuse and the criminal diversion of controlled substances. In addition, the PMP may authorize the collection of dispensing information on non-controlled substance prescriptions where the drug is especially subject to abuse or diversion.

Individual state PMPs are not fully connected or operable with each other. The State will utilize the System to address this lack of interoperability and provide the State with access to out-of-state PMP information in order to further support the lawful purpose of such programs.

NABP is a 501(c)(3) nonprofit organization that assists its member boards and jurisdictions for the purpose of protecting the public health.

NABP makes its System available to state PMPs in furtherance of such mission.

NABP has partnered with a solution provider, currently Appriss, Inc, to develop and maintain the System at little or no cost to the states.

The System permits authorized users to access or use information in one or more states' prescription monitoring programs.

NABP Responsibilities

1. NABP is responsible for developing and maintaining the functionality of the System, pursuant to requirements for access and use of PMP information that is established, from time to time, by the State. The System allows individuals who meet State-designated requirements ("Requirements") to access the State's PMP information. In turn, the System allows authorized individuals in the State, and in other states, who meet the criteria designated by each state, to access such state's PMP information. Such persons are collectively referred to as "Authorized Users."

2. NABP is responsible for developing and maintaining the System in accordance with the State requirements, industry standards, and laws and rules applicable to protected health information and personally identifiable information.
3. NABP is responsible for implementing a basic reporting functionality in the System so the State may access statistical reports regarding usage of State PMP information.
4. NABP may work with one or more solution providers, now or in the future, to discharge its responsibilities under this MOU.
5. NABP and its solution provider(s) will not use any protected health information and/or personally identifiable patient information that is transmitted through the System for any purpose, except as specifically authorized by the State in writing.
6. NABP agrees to implement the State requirements for access to and use of the State PMP information.
7. NABP is responsible for designating a contact person(s) to assist Authorized Users if there are questions about the System and to provide technical support.
8. With the exception of State and State contractors, NABP is responsible for any complaints, investigations, lawsuits, losses, or damages relating to claims that an NABP employee, agent, or contractor failed to comply with state or federal laws or rules applicable to PMP information in the performance of this MOU or failed to comply with any requirement for access or use of PMP information through the System in his or her performance of this MOU, whether the requirement was established by the State, another state, or NABP.
9. Except as otherwise agreed to herein, NABP is not responsible for any use of the System or PMP information by any user, any state-authorized users, or any state employees, agents, or contractors.
10. NABP will cover all costs associated with the development of the System, including upgrade costs.
11. To the extent that funds are available to and budgeted by NABP, NABP will cover all reasonable necessary and otherwise unfunded costs associated with modifying state PMPs solely to be able to interface with the PMP InterConnect.
12. NABP will cover all annual participation and maintenance costs for state participation in the PMP InterConnect through June 30, 2018. At least one year prior to this date, NABP will notify states whether it will continue bearing all costs of state participation. If the State will be required to pay any part of the participation and maintenance fees, NABP will so notify the State of the maximum cost for participation for the next two-year period, giving a one-year notice of potential future costs to the State.

State Responsibilities

1. State is responsible for timely providing NABP with the Requirements for access to and use of State PMP information (the Requirements are incorporated into this MOU as Attachment A). The State is responsible for timely notifying NABP of changes to such Requirements.
2. State is responsible for ensuring that its Requirements for access to and use of State PMP information comply with all applicable State and federal laws and rules.
3. State is responsible for ensuring its employees, agents, contractors, and affiliates comply with State and federal laws and rules applicable to the State's participation in and use of the System and states' PMP information.
4. State is responsible for any complaints, investigations, claims, lawsuits, losses, damages, and the like, relating to claims that a State employee, agent, contractor, or affiliate failed to comply with State or federal laws or rules applicable to PMP information in the performance of this MOU or failed to comply with any requirement for access or use of PMP information through the System in his or her performance of this MOU, whether the requirement was established by the State or NABP.
5. State is responsible for handling any complaints, investigations, or the like, and any disciplinary or enforcement matters concerning claims that its Authorized User failed to comply with State or federal laws or rules applicable to PMP information accessed through the System or any requirement for access or use of PMP information through the System.
6. State is responsible for ensuring that no other state's PMP information is added to any State information system or database except for an image of state PMP information that has been validly requested through the System. The State will securely store such image online and it will be securely available to the authorized requestor for up to 30 days. Thereafter, the State may retain the image

indefinitely in a secure database with access restricted to only those authorized State employees or staff who have a legitimate State need to access or use such image.

7. If another state files a complaint against a State-authorized user for failure to comply with applicable State or federal laws or rules or fails to otherwise comply with any requirement for access or use of PMP information, or the System requirements, State agrees to investigate such complaint and is responsible for the cost of such investigation.
8. State agrees to collaborate with NABP to implement State Requirements for access to and use of State PMP information.
9. State is responsible for designating a contact person(s) to assist NABP if there are questions about State Requirements for access to or use of State's PMP information.
10. Except as legally required pursuant to a valid subpoena or court order, State cannot provide or otherwise make available non-State PMP data obtained through PMP InterConnect to a state or another individual or entity unless State uses the PMP InterConnect to provide such PMP data.

Information Disclaimer

PMP information that is accessed through the System is provided "as is," meaning as it is maintained by the particular state, and there is no guarantee from NABP that such information is complete, accurate, current, or reliable.

Term and Termination

1. This MOU is effective as of the date of last signature, below, and remains in effect for one year from the effective date. Thereafter, the MOU will automatically renew for consecutive one-year periods on the anniversary of the effective date until either party provides the other with 30 days prior written notification of termination.
2. The State or NABP may terminate this MOU at any time by providing 30 days prior written notice of termination.
3. In the event of a material breach of this MOU, or suspected breach of PMP information, either party may immediately terminate this MOU.

Indemnification

Each party to this MOU shall be responsible for the negligent acts and/or omissions of its officers, agents, employees, and contractors. Neither Party is liable to the other or any third party for any consequential, indirect, special, or incidental damages, including but not limited to lost profit, loss of goodwill, or loss of use, however caused, whether or not the possibility of such damages was disclosed to a Party or could have been reasonably foreseen by a Party. NABP shall hold the Commonwealth (including the Department of Health) its officers, agents and employees, harmless against any and all third party claims, demands and actions based upon or arising out of any negligent activities performed by NABP and its officers, agents and employees under this MOU, and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such third party claims or demands.

Assignment

With the exception of NABP, which may assign this MOU to any of its affiliates with common ownership, or a solution provider in addition to or to replace Appriss, Inc, neither Party shall assign the whole or any part of this MOU without the other Party's prior written consent.

Force Majeure

Neither Party shall be liable for delay or failure in performance of any of its obligations under this MOU when such delay or failure arises from events or circumstances beyond the reasonable control of such Party, including, without limitation, acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, labor disputes, communications or power failure that are not caused by NABP or its contractors, equipment or software malfunction not caused by NABP or its contractors and which are of a general nature within commerce (ie, a general failure of the Windows operating system, Oracle software, the Internet, or similar type of failure).

Notice

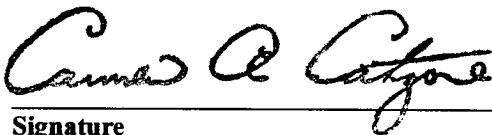
Any notices or other communications that are required or that may be given by either Party to the other Party under this MOU, shall be in writing and must be sent by private courier service, in a trackable manner with a verified delivery receipt, or by registered or certified mail, postage prepaid, and addressed to the Party representative, as stated herein or as a Party may designate from time to time, or by facsimile or email; however, the original must be sent either by private courier service, in a trackable manner with a verified receipt, or by registered or certified mail, postage prepaid, and addressed to the Party representative as stated herein, or as a Party may designate from time to time.

Miscellaneous

1. This MOU, including all accompanying Attachments, constitutes and expresses the entire MOU and understanding between the Parties regarding all the matters herein referred to, all previous discussions, promises, representations, and understandings relative thereto, if any, between the Parties regarding the subject matter herein.
2. The Parties may amend or revise this MOU so long as such changes are agreed to in writing by the Parties and executed by the designated individuals authorized to amend the MOU.
3. Under this MOU, Parties agree that NABP will perform as an independent contractor, and not as an agent or employee of the State.
4. NABP agrees to comply with all applicable state and federal laws and regulations concerning non-collusion and bidding, employment including equal opportunity, prohibitions on hiring illegal immigrants, use of the e-Verify system, and anti-discrimination laws and rules, the Americans with Disabilities Act, and drug-free workplace laws.
5. NABP and the State bind their agents and designees to all the terms and conditions of this MOU.
6. The invalidity of any section, subsection, clause, or provision of this MOU shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this MOU.
7. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any right, benefit, or remedy of any nature whatsoever under or by reason of the MOU.
8. The provisions of this MOU shall be construed in accordance with the provision of the laws of the Commonwealth of Pennsylvania.

The undersigned warrant that they are authorized representatives of their respective entities and that they are authorized to enter into this MOU and, by their signatures below, hereby bind their respective entities to the terms and conditions of this MOU.

National Association of Boards of Pharmacy



Signature

Carmen A. Catizone

Printed Name

Executive Director/Secretary

Title

MAY 17, 2016

Date

**Commonwealth of Pennsylvania
Department of Health**



Signature

Lauren S. Hughes
Printed Name

Deputy Secretary
Title

May 13, 2016
Date